Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES

WILLIAM C. STEARMAN, III, et al.,
Plaintiffs – Appellants – Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, et al.,
Defendants – Appellees – Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ORIGINAL PETITION FOR WRIT OF CERTIORARI

WILLIAM C. STEARMAN, III
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Questions Presented

1. Is it sanctionable to argue the law?

2. Did comm'r ever respond?

3. Did COLVIN ever have signature authority?

4. Do TCRs 120 and 121 deny a petitioner's access to the court?

5. Did PANUTHOS ever have signature authority?

6. Does § 455(a) apply?

Statutory Challenges

7. Does TCR 182, as amended, still violate Due Process?

8. Does irc § 7443A violate Due Process? [New]

9. Does TCR 160 violate Due Process?

Parties

Plaintiffs – Appellants

William C. Stearman, III, and
WILLIAM C. STEARMAN, III

Respondents – Appellees

Commissioner of Internal Revenue [Service], and
COMMISSIONER OF INTERNAL REVENUE
[SERVICE]

Trial Court

United States Tax Court
UNITED STATES TAX COURT

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Petition for a Writ of Certiorari

Stearman petitions for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit as follows:

Citations to decisions below

None, here. No. 08-1034.
But see T.C. Memo. 2005-39; 426 F.3d 533.

Basis for Jurisdiction

(i) Date Judgment Was Entered
28 April 2008 [+90: 28 July (Sun., 27 July)]

(ii) Rehearing, Extension
None

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1254(1), 2101(c), 2201.

(v) Statutory Challenges, Rule 29.4(b)
TCR 182 (and 183); irc § 7443A(c) (new); TCR 160. Agency is party. No court certification to the Attorney General.

Non-Argument Calendar Preferred

Oral argument is not expected to aid in the resolution of these issues.

Statement of the Case

Trial court jurisdiction

26 U.S.C.A. § 7442 (68A Stat. 879 (1954)).

Conflict within *and* among the circuits

D.C. Circuit.

Cf. O'Connor v. comm'r, No. 07-1456 (D.C. Cir.) (*transferred* to 9th Cir.), now No. 08-71474 (9th Cir.) (*Scheduling Order* entered), *with* Stearman v. comm'r, No. 08-1034 (D.C. Cir.) (*dismissed*).

Ninth Circuit.

Cf. O'Connor v. comm'r, No. 08-71474 (9th Cir.) (Scheduling Order entered) (DOJ has missed its briefing deadline), *with* O'Connor v. comm'r, No. 05-70536 (sanctions), *and* O'Connor v. comm'r, No. 06-70954 (dismissed).

The St. Louis court.

United States v. Tharp, No. 5:03-CV-5283 (W.D. Ark.), No. 04-3772 (sanctions).

The New Orleans group.

Tello v. comm'r, Nos. 04-60955, 04-61146 (published, sanctions);

Stearman v. comm'r, No. 05-60521 (published, sanctions);

Florance v. comm'r, No. 05-60552 (sanctions);

Wallis v. comm'r, No. 06-60256 (sanctions);

Taylor and Taylor v. comm'r, No. 07-60665 (hidden sanctions via denial of Refund).

But see In re Braquet, No. 08-20023 (no sanctions).

Procedural history

First time through, the tax court sanctioned Stearman, as did the New Orleans group. This is the second time through, via the challenge to the Notice of Lien. More sanctions by the tax court, and the D.C. Circuit granted DOJ's motion to dismiss.

Procedures in the tax court

Typical Record-tampering.

They just can't leave the documents alone. Practically every document Stearman submitted is defaced. *See* the case styles and document titles. That incessant effort, under color, to change this federal witness' testimony has failed miserably. That perpetual effort, under color, to coerce this tax court petitioner to waive his defenses, objections, and positions has failed miserably.

Typical "secret order" cultism.

Not only are the documents defaced, but also there is no Notice, no motion, no *sua sponte* show cause order, no opportunity to respond, no hearing, and no order, at all, much less explaining ***why*** they feel obliged to deface *these* documents. Thus, the tax court wholesale strikes parties or capacities for absolutely no *judicial* reason whatsoever.

May a court correct misnomer? Absolutely. May a court dismiss parties, whether for misjoinder or some other reason? Absolutely. But, both of those require ***orders***, signed and entered of Record, which nowhere happens here. And, this is not the first time this topic has been brought to their attention.

Typical compelled consent.

In ¶ **3** of his verified original petition, Stearman objected to both COLVIN and PANUTHOS. COLVIN

then *assigned* PANUTHOS without order of Record, and then ***referred*** the case to PANUTHOS without order of Record *and* without any consent of Record of all parties, which overtly never existed from the very beginning. Stearman promptly objected, ***again***, to PANUTHOS' participation, by way of a motion to strike, since PANUTHOS has no signature authority.

Even though the determination of "consent" is a non-delegable duty vested in the referring judge, i.e., COLVIN, PANUTHOS is the one who ruled on Stearman's motion to strike PANUTHOS' "order."

Typical sequence of events.

Since "filing" and "serving" are both by "mailing," all dates are "on or about."

2007 June 25. Stearman filed his verified petition with the tax court, challenging the Notice of Lien, demanding that comm'r satisfy its threshold burden.

2007 Aug 1. Comm'r filed its typical TCR 40 motion to dismiss. New is comm'r's TCR 52 motion to strike. Absent is the typical motion for sanctions, thus also the typical TCR-54-violating conjoined-motion*S* document.

2007 Aug 20. COLVIN filed his typical TCR 51 motion (restricted to ***parties***), which is typically vague, disguised as an order. COLVIN also entered some other matters in that same order.

2007 Sep 6. Stearman (A) declined to amend, via his Rule 50(c) document, *but cf.* PANUTHOS' "order" of 4 Oct. p.2 ¶ 4 (PANUTHOS recognized no Rule 50(c) document); (B) responded to comm'r's motions; and (C) filed his motions (1) for default judgment and (2) for judgment on the pleadings.

2007 Sep 11. COLVIN denied Stearman's 6 Sep. motions.

2007 Oct 4. PANUTHOS entered his typical dismissal and decision, ignoring the only facts that exist as well as the only facts that matter, as usual, calling the law "tax protestor rhetoric," as usual, and sanctioning Stearman, as usual; this time *sua sponte* for another $15,000.

2007 Oct 15. In addition to his (1) § 455(a) Notice and Demand for Board of Inquiry, Stearman filed the following motions: (2) to strike TCR 182; (3) to strike PANUTHOS' "order;" (4) for new trial; (5) for administrative sanctions; (6) for litigation sanctions; (7) to strike TCR 160; (8) for reconsideration of findings or opinion (TCR 161); (9) to vacate or revise decision (TCR 162); and (10) to set aside default, dismissal, and decision (TCR 123(c)).

2007 Oct 17. PANUTHOS construed the § 455(a) Notice and Demand for Board of Inquiry as a motion and denied it. PANUTHOS also denied all other post-judgment motions of 15 Oct.

Appellate events

Stearman timely appealed to the D.C. Circuit. They entered an initial Scheduling Order. However about a week before the Scheduling Order arrived, DOJ's motion to dismiss or to transfer arrived, and Stearman submitted promptly a verified response to that motion.

The D.C. Circuit dismissed the appeal as of 28 April 2008.

Substantive Highlights

To date, comm'r has refused and failed even to acknowledge that it ***has*** a threshold burden of proof, much less to satisfy it. Comm'r has refused and failed

to establish any commercial nexus—there is no signed writing establishing any fiduciary obligation in Stearman to any beneficiary(ies), which is/are still unknown and undisclosed, regarding any trust *res*. Comm'r has refused and failed to justify what its alleged relationship is to such still unknown and undisclosed beneficiary(ies). Thus, comm'r has no "injury in fact" and is not a real party in interest. The second greatest possible confession of comm'r's refusal, failure, and non-claim is its incessant "motion to dismiss" response to Stearman's verified demands for proof. Stearman has yet to be burdened with the need to assert any defense, which, when asserted, would not be a "claim," at all, anyway!

Moreover, the greatest possible confession of comm'r's refusal, failure, and non-claim is the systemic addiction to sanctions. Thus, should a defense ever have been necessary, comm'r, the tax court, DOJ, and the New Orleans group have more than amply supplied "clear evidence" for such defenses from the beginning. The fact that the tax court ***still*** feels compelled to sanction Stearman for his demanding that the law be applied and that comm'r satisfy its threshold burden all the more proves the manifest disclaimer that permeates the entirety of this lawless ordeal. Additionally, another affirmative defense Stearman has raised is illegality, and nowhere does comm'r produce the proof that the purported obligation is in any way consistent with public policy, starting with The Patriot Act.

In sum, there is no obligation, for there is no trust. But, if there were, disclaimer and illegality are more than clearly proved via Judicial Notice. Stearman owes no "income tax."

Argument

1. Is it sanctionable to argue the law?

Dismissal policy.

For the dismissal entered by the D.C. Circuit to be justified, the sanctions issued by the New Orleans group have to be lawful. Thus, there must be evidence that Stearman's position is, in fact, frivolous and groundless.

Policy not satisfied.

Since it's impossible for the act of asserting even a debatable point to be either frivolous or groundless, it's the height of impossibility for the act of asserting the law, itself, to be both frivolous and groundless, much less sanctionably so. Thus, the sanctions issued by the New Orleans group against Stearman, who is just one of those sanctioned, are based on absolutely no evidence in support whatsoever.

In the beginning .... The editors at irs.gov have never said one word about the published *Tello* case. In fact, they have never mentioned one word about **"taxpayer" means "fiduciary,"** perhaps because it's never been asserted before, or perhaps because they know better than to make an issue of it. Whatever their reason(s), and despite the fact that not one word has ***ever*** been published in any judicial opinion or at irs.gov regarding **"taxpayer" means "fiduciary,"** the New Orleans group called the law "shop worn" as they sanctioned Tello.

FOLEY, J., in the Wallis case, found nothing sanctionable about Wallis' demands for proof of the threshold burden. After nine months of reflection, FOLEY denied ***both*** of comm'r's sanctions motions.

Some more recently, ducking and running from the reality, comm'r asked the tax court to deny its typical and improperly conjoined motion**S** to dismiss and for sanctions in Florance v. comm'r, No. 26283-07. Comm'r filed no motion at all in Florance v. comm'r, No. 7364-08, but instead filed an unverified "answer," and time will tell how comm'r responds in Ramer v. comm'r, No. 11623-08, and in Braquet v. comm'r, No. 13071-08.

These indicia of change are dramatic, but they pale in comparison to the Ninth Circuit's self-disciplined reversal of their original perspective, where they found the law "unpersuasive." We see that reversal in the O'Connor cases. Key to the Ninth Circuit's change of mind is the D.C. Circuit's leadership. The D.C. Circuit opted to transfer O'Connor's third appeal rather than to dismiss it.

Thus, the D.C. Circuit presents its own "conflict," having transferred O'Connor but dismissed this one. And, the Ninth Circuit presents its own "conflict," have previously (1) sanctioned and (2) dismissed, respectively, O'Connor's first two appeals, but having (3) set her third appeal for briefing!

Moreover, the D.C. Circuit's transfer of the third O'Connor appeal coupled with the Ninth Circuit's Scheduling Order conflict directly with (A) the New Orleans' group's addiction to sanctions, e.g., Tello, Wallis, Florance, Stearman, and Taylor, and with (B) the Eighth Circuit's sanctions in the Tharp case. Key, if the sanctions against O'Connor in that very ***first*** case were *lawful*, it's impossible to think that the D.C. Circuit would have *transferred* that **third** appeal. O'Connor's first case (unpublished) and Stearman's first case (very published), are quite

similar; key, the tax court and the New Orleans group had no more evidence of anything sanctionable in the Stearman case than the tax court and the Ninth Circuit had in the O'Connor case.

To verify the D.C. Circuit's leadership, to solidify the Ninth Circuit's repentance, and, thus, to confirm the vastness of the present conflict among the circuits, DOJ's motion to dismiss O'Connor's third appeal has been denied ***three*** times: (1) D.C. transferred; (2) Ninth set briefing schedule; and (3) Ninth has gone silent to DOJ's post-transfer, ***second*** submission of that ***same*** sanctions motion!

No evidence.

Bank of the United States (evidence ultimately determined sufficient, but due diligence is required of claimant asserting claim against endorser, not maker, as to place of presentment); *Roselius* (evidence of perfect land title insufficient to support federal jurisdiction); *Jones Nat'l Bank* (is there substantial evidence to support the charge?); *Sinclair*, 279 U.S. at 761 (no material evidence to support charge); *Alexander* (no evidence supporting two of the claims); *Swift & Co.* (insufficiency of statute and indictment were not issues directly appealable to Supreme Court); *Bozza* (of the five counts, four were based on insufficient evidence); *Pittsburgh Steamship Co.* (federal appellate court's "finding" of trial examiner's bias was not supported by the Record); *Thompson*, 362 U.S. at 207 nn.12, 13 ("[It is] a violation of due process to convict and punish a man without evidence of his guilt."); *Garner* (Record so devoid of evidence as to render conviction a violation of Due Process); *Barr* (peaceful "sit-in" is not evidence of breach of peace); *Johnson*, 391 U.S. at

598 (no evidence supporting an element of the charge); *Vachon*, 414 U.S. at 480 ("It is beyond question, of course, that a conviction based on a record lacking any relevant evidence as to a crucial element of the offense charged . . . violate[s] due process."); *Burks* (reversal based on insufficiency of evidence activates Double Jeopardy); *Haley* ("actual innocence" defense allows review of procedurally defaulted sufficiency challenge) (STATE's evidence insufficient to justify enhancement).

Summary.

Given the conflict within ***and*** among the circuits on the issue of whether it was ever sanctionable to argue the law, it's legally impossible for Stearman's position ever to have been sanctionable. There simply never was evidence of anything sanctionable. Thus, the sanctions are not lawful, and the access restriction is not, and cannot be, justified.

Thus, dismissal of the appeal was improper, and the D.C. Circuit's judgment should be vacated. Also, the New Orleans group's published *Stearman* case should be vacated or otherwise overruled.

Because the matter sounds in equity, and because the Court may review the facts *de novo* and enter a ruling, the following Questions are raised. If further development of them in the appellate court is in order, then remand to the appellate court to consider them, and to reconsider the venue issue, would be appropriate. Should remand to the tax court be necessary, such should be accompanied by an instruction that neither COLVIN nor PANUTHOS shall participate.

2. Did comm'r ever respond?

Stearman's motion for default judgment.

Comm'r has 45 days to file a motion or 60 days to file a responsive pleading. TCR 333, 36. The tax court served Stearman's verified petition as of 27 June, rendering the motions deadline 13 August (11 August was a Saturday), and the pleadings deadline 27 August (26 August was a Sunday). Comm'r filed a TCR 40 motion to dismiss, and a TCR 52 motion to strike as of 31 July. COLVIN then filed his TCR 51 motion for more definite statement, without anything like particularity or specificity, as of 20 August.

Comm'r's TCR 40 and TCR 52 motions are facially sanctionable and should be considered struck.

COLVIN has no signature authority to file a TCR 51 for comm'r at any time, much less late.

And, comm'r never filed a pleading, much less a verified pleading establishing comm'r's threshold burden. *Lujan* (injury in fact); BOGERT § 50 at 102 ("The burden of proof is on the party who asserts the existence of a trust."), § 871 at 156 and nn.2, 3 (where a *beneficiary* fails to prove damages, there is no recovery); RESTATEMENT (SECOND) TRUSTS § 2 cmt. h (1959); *Mitchell II*, 463 U.S. at 225 (citing RESTATEMENT (SECOND) TRUSTS); SCOTT, ABRIDGMENT, LAW OF TRUSTS, §§ 66. (necessity of beneficiary and trust property), 74 (necessity of trust property), 112 (necessity of beneficiary); TEX PROP. CODE § 112.004 (signed writing); Rules 9(a), 17(a).

If there is no "competence" requirement relevant to comm'r's motions, then they are timely. However, if there is a "competence" requirement, Stearman's motion for default judgment should be granted.

3. Did COLVIN ever have signature authority?

Perpetual participation as a party.

COLVIN picked up where GERBER left off, taking over the representation of comm'r in every **"taxpayer" means "fiduciary"** case that has been filed during his tenure as chief judge. Stearman objected to COLVIN's participation in ¶ 3 of his original petition. However, not only did COLVIN participate, but also, and again, he participated ***as a party***, filing his TCR 51 motion by trying to disguise it as an order, which motion is facially incompetent, given that it makes no specific objections, at all. Once again, *comm'r* had no problem formulating a response; it is *COLVIN* who asserts the motion for a more definite statement every time.

Thus, between Stearman's threshold objections and COLVIN's proving ***one more time***, via his habitual Record-tampering and his participation ***as a party why*** those threshold objections existed in the first place, it follows that COLVIN never had signature authority in this case.

All of COLVIN's "orders," both those of Record ***and*** his "secret" "orders," should be struck.

4. Do TCRs 120 and 121 deny a petitioner's access to the court?

Stearman's motion for judgment on the pleadings.

TCRs 120 and 121 purport to prevent a petitioner from requesting judgment on the pleadings until "after the pleadings are closed." Pleadings aren't closed unless comm'r files something that qualifies as

a pleading. Thus, the tax court, by its local rules, render a petitioner's access, and remedies, dependent on what ***comm'r*** files or doesn't file. TCRs 120, 121.

If that's lawful, then it was always too early for Stearman to file his motion for judgment on the pleadings. *But see* Rule 56 (plaintiff's motion not controlled by the existence of a responsive pleading).

If not, then Stearman's verified petition remains unchallenged, *O'Connor* (uncontroverted Affidavit accepted as true), and Stearman's motion for judgment on the pleadings should be granted.

5. Did PANUTHOS ever have signature authority?

The "secret order" cultism continues.

In *Ballard*, this Court specifically ordered the tax court to stop engaging in "off Record" judicial activity. The admonition fell on ears more deaf than Helen Keller's. None is so deaf as he who ***refuses*** to hear. The tax court's "secret order" cult continues.

There is no order of Record *assigning* any special trial judge (STJ). There is no order of Record ***referring*** any STJ, in particular PANUTHOS. If they were to exist, and if COLVIN were the one signing them, there'd *still* be no such orders of Record. But, that's a moot point, since there are no such orders of Record.

Stearman's threshold objection to PANUTHOS.

See Stearman's verified original petition, ¶ 3.

Stearman's responsive objection to PANUTHOS.

See Stearman's motion to strike PANUTHOS'

"order." Between (A) the TCRs, which reserve such enormous discretion in the "judges" that there is no Notice of the intent to refer, and (B) the complete absence of any *assignment* or ***referral*** orders of Record, Stearman's first Notice of any STJ participation was PANUTHOS' 4 Oct. "order." Stearman's motion to strike PANUTHOS "order" was served 11 Oct., and stamped 15 Oct.

Compelled consent *still* doesn't work.

Gonzalez ("If the parties consent ....").

The STJ is in the same position with respect to the tax court "judge" as the "magistrate" is with respect to the federal court "judge." A federal "judge" holds office "during good behavior." § 451. A "magistrate" holds office for a specific term. § 631(e). And, while the tax court "judge" holds office only for a fixed term, irc §§ 7443(e), and while the STJ's term isn't specified, irc § 7443A, TCRs 3(d), 180, it's still the case that to get to an STJ, one first goes through the tax court "judge." Thus, in exactly the same way that a magistrate is an alternate decision-maker, who obtains signature authority solely by unanimous consent of the parties, the STJ is an alternate decision-maker who obtains signature authority solely by unanimous consent of the parties.

Stearman not only never consented to any STJ, but also specifically and overtly objected to PANUTHOS from the instant the case started. Stearman confirmed his lack of consent immediately upon receipt of the 4 Oct. "order."

Strike rather than vacate.

PANUTHOS' "orders" should not be vacated, but rather should be struck. PANUTHOS never had

signature authority: (1) COLVIN never had signature authority to participate, meaning that even the "secret order" of ***referral*** has no signature authority; (2) Stearman specifically objected to PANUTHOS from the outset; and (3) Stearman again objected immediately upon receipt of that 4 Oct. "order." So, we never get to the content.

Epilog. No post-judgment authority, either.

PANUTHOS also denied all of Stearman's post-judgment motions. Fittingly, consent or no consent, ***no*** STJ *ever* has any post-judgment authority.

TCR 182(c) makes the STJ directly responsible to the chief judge. Thus, ***all*** STJ cases are TCR 182(e)/183 cases! Where the STJ has to report to the chief judge per TCR 182(c), the case ***has*** been assigned to a "judge," per TCR 182(e), namely to the chief judge, and a "report" ***has*** been submitted to a "judge," per TCR 182(c)/(e), which is ***exactly*** what TCR 183 addresses. What necessarily follows, then, is that no STJ ***ever*** has any post-judgment authority. Period!

Since PANUTHOS never had signature authority, ***all*** of his "orders" should be ***struck***, not vacated.

6. Does § 455(a) apply?

COLVIN.

Between COLVIN's "secret orders," his TCR 51 participation ***as a party***, his Record-tampering, and his running roughshod over Stearman's well-documented lack of consent to PANUTHOS, it follows that COLVIN more than triggered § 455(a). *Liljeberg*.

PANUTHOS.

Between PANUTHOS' Record-tampering, his "secret orders" striking parties and capacities, and his conspiring with COLVIN to run roughshod over Stearman's direct and specific objection to PANUTHOS' participation from the very beginning, it follows that PANUTHOS more than triggered § 455(a). *Liljeberg*.

STATUTORY CHALLENGES

7. Does TCR 182, as amended, still violate Due Process?

The "who decides" question.

The parties decide whether an STJ participates, ***not*** the legislature, ***or*** the executive, ***or*** the judiciary. *Gonzalez*. *See* Question 5.

TCR 182.

TCR 182 is the focus in *Ballard*. Despite that admonition, the problem persists.

TCR 182(D)—COMPELLED CONSENT.

What permeates this entire procedure is the concept that the chief judge thinks he may dictate the whole matter of STJ participation. Compelled consent violates Due Process. *Rudzewicz*, 471 U.S. at 486; *Ohralik* (limiting "in person" solicitation; thus, limiting duress, coercion, and undue influence engaged in by the legal profession); *Bates* (regarding "by mail" solicitation and other forms of legal services advertising); *Ceballos* (ethics still matter; testifying against one's client is ***very*** bad).

The chief judge may *not* unilaterally ***refer*** *any*

case to any STJ. The chief judge may ***assign*** an STJ, but **the parties** decide whether any actual ***referral*** will happen, and then to what extent.

TCR 182(c)—SUBMITTED [ONLY] TO THE CHIEF JUDGE?

Talk about "secret orders!" *Cf.* § 636(b)(1)(C) (recommendations ***filed and served***). It's difficult to see how TCR 182 is salvaged by judicially binding it with a "by consent only" construction. *Cf. Gonzalez.*

If there's going to be an STJ, then the recommendations are going to be ***filed and served***, just as with any other order. *Cf. Ballard* and TCR 182(e).

TCR 182 facially violates Due Process.

Even as amended, nothing saves this rule. TCR 182 is going to have to be rewritten (A) to include, formally, the *Gonzalez* "by consent only" concept and (B) to eliminate its "secret order" aspect.

8. Does irc § 7443A violate Due Process?

The problem is in § 7443A(c).

As such, this is new. However, it also explains why TCRs 182 and 183 read the way they do.

Section 7443A(a) addresses the discretion to hire STJs. Section 7443A(b) addresses ***assignment*** not ***referral***. But, § 7443A(c) puts into the hands of the chief judge the decision to allow the STJ to make the decision of the court.

That decision isn't the chief judge's to make! The legislature either have or haven't granted that authority to the STJ. Then, the parties either have or haven't consented to the STJ's scope of authority.

Further, where "consent" is nowhere mentioned, § 7443A facially appears to justify, at one extreme, compelled consent to STJ participation *at all* in the first place, and, at the other, tortious interference with agreements between the parties and the STJ.

The congress have clearly authorized the STJ to enter the decision of the court. Once the legislature grant that authority to that office, it is then up to ***the parties*** whether that STJ makes the final decision or not. To delegate to the *judiciary* the decision of the *scope* of authority in the office of STJ or the *participation level* of a consented-to STJ facially violates Separation of Powers. Moreover, the congress cannot possibly be heard to allow tortious interference by the chief judge of the agreement among the parties. Once the *scope* of the office is set *legislatively*, to allow the judiciary to interfere with the agreement of the parties regarding participation level violates Due Process.

9. Does TCR 160 violate Due Process?

Deceptively dissimilar from FED. R. CIV. P. 50(b).

TCR 160 conflicts with, even opposes, *Unitherm Food Systems*. TCR 160 is basically the same as Rule 50(a), but it has no equivalent to Rule 50(b), which addresses, in particular, appellate consideration of entry of a result directly contrary to the tax court's. And, it's unconscionable to suggest that the tax court may ignore the law of evidence unless and until substantial rights are affected, because tax court decisions affect substantial property rights in every case. Ultimately, what TCR 160 accomplishes, as

applied, is an irrebuttable presumption (which violates Due Process, *Elkins*, *Salfi* (in particular part III, which distinguishes *Salfi*), *LaFleur*, *Vlandis*, *Stanley*), that comm'r establishes the threshold burden all the time. That unlawfully shifts the burden of proof, *Beard* (citing *Anderson*, 477 U.S. at 255), *Scott* (citing *Diebold*, 369 U. S. at 655) (summary judgment context), and/or purports to compel consent, *Rudzewicz*, 471 U.S. at 486, *Ohralik*, *Bates*, *Gonzalez*, which is exactly what has happened in this case, and which result ***always*** affects substantial rights.

Remedies Requested

Given the foregoing, Stearman requests remedies and relief as follows:

1. Grant this petition, issue the writ of certiorari, and take jurisdiction of this matter;
2. Vacate the dismissal of the appeal;
3. Overrule the published *Stearman* case;
4. Strike, not vacate, but strike, for lack of signature authority, all of COLVIN's "orders," including the "secret orders;"
5. Strike, not vacate, but strike, for lack of signature authority, all of PANUTHOS' "orders," including the "secret orders;"
6. Enter a final ruling that commissioner take nothing, whether by default judgment or judgment on the pleadings, and that all liens and levies be released, or remand to the D.C. Circuit for briefing, or remand to the tax court with

instructions, including a non-participation restriction on COLVIN and PANUTHOS;

7. The opportunity to brief any additional issues the Court may identify;
8. The non-argument calendar;
9. Costs; and
10. Any and all other relief at law, in equity or sui generis to which he may show himself justly entitled.

Respectfully submitted,

/s/ William C. Stearman, III
William C. Stearman, III

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Appendix A

Rule 14.1(i)(i)—Appellate Opinion(s)

2008 Apr 28—D.C. Circuit's dismissal

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-1034 **September Term 2007**

IRS-14345-07

Filed On: April 28, 2008

William C. Stearman, III,

Appellant

v.

Commissioner of Internal Revenue Service,

Appellee

BEFORE: Sentelle, Chief Judge, and Rogers and Tatel, Circuit Judges

ORDER

Upon consideration of the motion to dismiss appeal for failure to pay sanctions or, in the alternative, to transfer appeal to the Fifth Circuit, where venue properly lies, and the response thereto, it is

ORDERED that the motion to dismiss be

granted and the alternative motion to transfer be dismissed as moot. In light of appellant's continuous refusal to pay the taxes he owes and the sanctions imposed by his actions, this frivolous appeal should be dismissed with prejudice rather than transferred to the Fifth Circuit, which has already sanctioned appellant for behavior characterized as an intentional pattern of delay and contumacious conduct. See Maxwell v. Snow, 409 F.3d 354, 357 (D.C. Cir. 2005) (upholding dismissal of actions where sanctions or costs incurred in earlier proceeding, or in prior action involving same or similar subject matter, remain unpaid) (citations omitted); 26 U.S.C. § 7482(c)(4) ("The United States Court of Appeals and the Supreme Court shall have the power to require the taxpayer to pay to the United States a penalty in any case where the decision of the Tax Court is affirmed and it appears that the appeal was instituted or maintained primarily for delay or that the taxpayer's position in the appeal is frivolous or groundless."); see generally Stearman v. CIR 436 F.3d 533 (5th Cir. 2006). [⊥ 2]

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

Rule 14.1(i)(ii)—Additional Orders

2007 Oct 4—Tax Court, Final Order

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WILLIAM C. STEARMAN, III, Petitioner	)	
v.	)	Docket No. 14345-07L.
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

ORDER OF DISMISSAL AND DECISION

This case is before the Court on respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and respondent's Motion to Strike, both filed on August 1, 2007.

Petitioner resided in Coppell, Texas, at the time that the petition was filed with the Court.

Background

In Stearman v. Commissioner, T.C. Memo. 2005-39, affd. 436 F.3d 533 (5th Cir. 2006), this Court dismissed petitioner's deficiency cases docket No. 20928-03 for 1999, 2000, and 2001 and docket No. 15561-04 for 2002 and imposed a $12,500 penalty under section 6673(a)[1] in each case. The U.S. Court of Appeals for the Fifth Circuit affirmed Stearman v.

[1] Section references are to the Internal Revenue Code as amended. Rule references are to the Tax Court Rules of Practice and Procedure.

Commissioner, supra, noting petitioner's frivolous arguments, insults, and other dilatory practices that wasted the Tax Court's resources in part because lesser sanctions were futile. Stearman v. Commissioner, 436 F.3d 533, 537 (5th Cir. 2006), affg. T.C. Memo. 2005-39. The Court of Appeals for the Fifth Circuit imposed $12,000 in sanctions on petitioner for pursuing a frivolous appeal.

On May 23, 2007, respondent sent petitioner at his last known address a Notice of Determination Concerning Collection [⊥ 2] Action(s) Under Section 6320 and/or 6330 in which respondent sustained a proposed collection action to collect petitioner's outstanding income tax liabilities for the tax years 1999, 2000, 2001, and 2002.

On June 25, 2007, petitioner timely filed a petition with this Court consisting of 13 pages of frivolous tax-protestor rhetoric.

As indicated above, respondent filed, on August 1, 2007, a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and, in the alternative to the motion to dismiss, a Motion to Strike.

The Court's Order dated August 20, 2007, required petitioner to file an amended petition. On September 6, 2007, petitioner filed: Stearman's Notice of Declining To Amend; Stearman's Response to Commissioner's Motion To Dismiss - No Claim; Stearman's Response to Commissioner's Motion To Strike; Stearman's Motion for Default Judgment; and Stearman's Motion for Judgment on the Pleadings, all of which consisted entirely of frivolous tax-

protestor rhetoric. Both of petitioner's motions were denied on September 11, 2007.

Pursuant to notice, this case was called for a hearing on respondent's above-referenced motions at the Court's motions session held in Washington, D.C. on September 19, 2007. Counsel for respondent appeared at the hearing and offered argument in support of respondent's motions to dismiss and to strike. There was no appearance by or on behalf of petitioner at the hearing, and petitioner did not file a Rule 50(c) statement despite notice of its availability in the Order setting this matter for hearing.

Discussion

Rule 331(b)(4) requires that a petition for lien or levy action filed in this Court contain clear and concise assignments of each and every error that the taxpayer alleges to have been committed by the Commissioner in the notice of determination. Rule 331(b)(4) also states that any issue not raised in the assignments of error shall be deemed to be conceded. Rule 331(b)(5) further requires that a petition for lien or levy action contain clear and concise lettered statements of the facts on which the taxpayer bases each assignment of error.

The pleadings that petitioner filed in this case do not satisfy the requirements of Rule 331(b)(4) and (5). Petitioner makes nothing but frivolous and groundless arguments that he is not liable for Federal income taxes. Under the circumstances, we [⊥ 3] see no need to catalog petitioner's arguments and painstakingly address them. As the Court of Appeals for the Fifth Circuit has remarked: "We

perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).

To the extent that petitioner disputes the existence or amount of the underlying tax liability, he is precluded from doing so because he did so in a prior proceeding. Stearman v. Commissioner, supra.

Petitioner did not raise a spousal defense or challenge respondent's collection action by offering a less intrusive means for collecting his unpaid taxes. Sec. 6330(c)(2)(A). These issues are now deemed conceded. Rule 331(b)(4). Because petitioner has failed to state a valid claim for relief, we shall grant respondent's motion to dismiss this case.

Penalty Under Section 6673

As relevant herein, section 6673(a)(1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or groundless.

Petitioner has had ample warning of the sanctions under section 6673(a)(1) in Stearman v. Commissioner, T.C. Memo. 2005-39, affd 436 F.3d 533 (5th Cir. 2006), and Stearman v. Commissioner, 436 F.3d 533 (5th Cir. 2006), affg. T.C. Memo. 2005-39. Despite those warnings, petitioner persists in making frivolous arguments which we conclude are for delay. Thus, we shall, on the Court's own motion,

impose a penalty pursuant to section 6673(a)(1).

Accordingly, upon due consideration of the foregoing and for cause, it is

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed August 1, 2007, is granted and this case is dismissed on the ground that the pleadings fail to state a claim upon which relief can be granted. It is further

ORDERED that, on the Court's own motion, petitioner is liable for a penalty under section 6673(a)(1) in the amount of $15,000. It is further [⊥ 4]

ORDERED that respondent's Motion To Strike, filed August 1, 2007, is denied as moot. It is further

ORDERED AND DECIDED that the Notice of Determination Concerning Collection Actions, dated May 23, 2007, upon which this case is based is sustained and respondent may proceed with the collection of income tax liabilities for taxable years 1999, 2000, 2001, and 2002, as determined in that notice.

/s/ Peter J. Panuthos
Peter J. Panuthos
Chief Special Trial Judge

ENTERED: OCT 4 2007

2007 Jun 27—Tax Court, Service of Petition

UNITED STATES TAX COURT
400 SECOND STREET, N.W.
WASHINGTON, D.C. 20217

June 27, 2007

NOTIFICATION OF RECEIPT OF PETITION

Docket No.: 14345-07 L

Name of Case: William C. Stearman, III

v. COMMISSIONER OF INTERNAL REVENUE

On June 25, 2007 the Court received and filed a PETITION in the above case.

Further: (X) Filing Fee Paid
(X) Designation of Place of Trial for Dallas, TX

Petition served on respondent on June 27, 2007.

All papers and correspondence MUST bear the DOCKET NUMBER given above. **Pursuant to Rule 21(b)(4), you are responsible for informing the Court of any change of address.**

Robert R. Di Trolio

Clerk of the Court

Please note that the Tax Court case information such as name, filings by the parties and actions taken by the Court can be found at the Tax Court website at www.ustaxcourt.gov. This information is updated Monday through Friday at 6:00 p.m. Eastern Time.

Pro Se:

William C. Stearman, III
504 Denton Tap Road
Coppel, [sic] TX 75019

2007 Aug 20—Tax Court, COLVIN's TCR 51 motion, and other "orders"

UNITED STATES TAX COURT
WASHINGTON, DC 20217

WILLIAM C. STEARMAN, III, Petitioner	)	
v.	)	Docket No. 14345-07L.
COMMISSIONER OF INTERNAL REVENUE, Respondent	)	

ORDER

Upon due consideration of respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and respondent's Motion to Strike, both filed August 1, 2007, it is

ORDERED that petitioner shall, on or before September 4, 2007, file an objection, if any, to respondent's motion to strike. It is further

ORDERED that petitioner shall, on or before September 4, 2007, file an amended petition. [N.B. emphasis added.] It is further

ORDERED that respondent's above-referenced motions are calendared for hearing at the Motions Session of the Court scheduled to commence at 10:00a.m., [sic] on September 19, 2007, in Tax Court Courtroom, Third Floor, U.S. Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. This Order constitutes official notice of hearing to the parties.

The parties are reminded of the applicability of Rule 50(c) of the Tax Court Rules of Practice and Procedure, which provides for the submission of a written statement in lieu of, or in addition to, attendance at the hearing.

In order that the hearings be scheduled as efficiently as possible, if either party believes that the hearing will extend beyond 30 minutes, that party shall so notify the Clerk of the Court by letter or by telephone at least 48 hours in advance of Motions Session. Any document submitted to the Court should [1. 2] reflect in bold print immediately beneath the docket number that it relates to the "Motions Session" of the Court and the date of said session.

(signed) John O. Colvin
John O. Colvin
Chief Judge

DATED: Washington, D.C.
August 20, 2007

2007 Sep 11—Tax Court, "Secret order" striking parties/capacities, and M/ Default Judgment denied

U.S. TAX COURT
FILED
SEP 6 2007

United States Tax Court
UNITED STATES TAX COURT

~~William C. Stearman, III, and~~	§	
WILLIAM C. STEARMAN, III,	§	
Petitioners,	§	Docket No.
v.	§	14345-07 L
~~Commissioner of Internal Revenue and~~	§	
COMMISSIONER OF INTERNAL REVENUE,	§	
Respondents.	§	

STEARMAN'S MOTION FOR DEFAULT JUDGMENT

U.S. TAX COURT
DENIED
SEP 11 2007
(Signed) John O. Colvin
JUDGE

2007 Sep 11—Tax Court, "Secret order" striking parties/capacities, and M' Judgment on the Pleadings denied

U.S. TAX COURT
FILED
SEP 6 2007

United States Tax Court
UNITED STATES TAX COURT

~~William C. Stearman, III, and~~	§	
WILLIAM C. STEARMAN, III,	§	
Petitioners,	§	Docket No.
v.	§	14345-07 L
~~Commissioner of Internal Revenue and~~	§	
COMMISSIONER OF INTERNAL REVENUE,	§	
Respondents.	§	

STEARMAN'S MOTION FOR JUDGMENT ON THE PLEADINGS

U.S. TAX COURT
DENIED
SEP 11 2007
(Signed) John O. Colvin
JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and Section 455(a) Notice and Demand for Board of Inquiry denied

UNITED STATES
TAX COURT
FILED
OCT 15 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~and—~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

MOTION

STEARMAN'S SECTION 455(a) ~~NOTICE~~ AND DEMAND FOR A BOARD OF INQUIRY

U.S. TAX COURT
DENIED
OCT 17 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, M/ Strike TCR 182 denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN,~~	§	
~~III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal	§	~~and 14345-07L.~~
Revenue ~~and—~~	§	
~~COMMISSIONER OF~~	§	
~~INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S MOTION TO STRIKE TCR 182

U.S. TAX COURT
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, M/ Strike PANUTHOS' "order" denied (by PANUTHOS)

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~and~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S MOTION TO STRIKE PANUTHOS' "ORDER"

U.S. TAX COURT
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, M/ new trial denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN,~~	§	
~~III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal	§	~~and 14345-07L.~~
Revenue ~~and—~~	§	
~~COMMISSIONER OF~~	§	
~~INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S MOTION FOR NEW TRIAL

U.S. TAX COURT
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and M/ Sanctions - Administrative denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN,~~	§	
~~III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal	§	~~and 14345-07L.~~
Revenue ~~and—~~	§	
~~COMMISSIONER OF~~	§	
~~INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S ~~POST-JUDGMENT~~ MOTION FOR SANCTIONS—ADMINISTRATIVE

U.S. TAX COURT
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and M/ Sanctions - Litigation denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and —~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~and—~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S ~~POST-JUDGMENT~~ MOTION FOR SANCTIONS—LITIGATION

U.S. TAX COURT
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and M/ Strike TCR 160 denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~and—~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S ~~POST-JUDGMENT~~ MOTION TO STRIKE TCR 160

U.S. TAX COURT
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and M/ for Reconsideration of Findings or Opinion denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~and—~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondents.	§	

STEARMAN'S ~~POST-JUDGMENT~~ MOTION FOR RECONSIDERATION OF FINDINGS OR OPINION

U.S. TAX COURT
D E N I E D
D E N I E D
OCT [*OCT*] 1 7 2007
(Signed) Peter J. Panuthos
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and M/ to Vacate or Revise Decision denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~and—~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S ~~POST-JUDGMENT~~ MOTION TO VACATE OR REVISE DECISION

U.S. TAX COURT
D E N I E D
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panutho [sic]
SPECIAL TRIAL JUDGE

2007 Oct 17—Tax Court, "Secret order" striking parties/capacities, renaming document, and M/ to Set Aside Default, Dismissal, and Decision denied

UNITED STATES
TAX COURT
F I L E D
OCT 1 5 2007

United States Tax Court
UNITED STATES TAX COURT

William C. Stearman,III,	§	
~~and—~~	§	
~~WILLIAM C. STEARMAN, III,~~	§	
Petitioner~~s~~,	§	Docket No~~s~~.
v.	§	14345-07 L
Commissioner of Internal Revenue ~~,and—~~	§	~~and 14345-07L.~~
~~COMMISSIONER OF INTERNAL REVENUE,~~	§	
Respondent~~s~~.	§	

STEARMAN'S ~~POST-JUDGMENT~~ MOTION TO SET ASIDE DEFAULT, DISMISSAL AND DECISION

U.S. TAX COURT
D E N I E D
D E N I E D
OCT 1 7 2007
(Signed) Peter J. Panut [sic]
SPECIAL TRIAL JUDGE

Rule 14.1(i)(iii)—Rehearing, or other extension

None

Rule 14.1(i)(iv)—Judgment of different date

None

Rule 14.1(i)(v)—Statutes and Rules

TCR 51

RULE 51. MOTION FOR MORE DEFINITE STATEMENT

(a) General: If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that ***a party*** cannot reasonably be required to frame a responsive pleading, then ***the party*** may move for a more definite statement before interposing a responsive pleading. **The motion shall point out the defects complained of and the details desired.** See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

TCR 51(a) (emphasis added).

TCR 120

RULE 120. JUDGMENT ON THE PLEADINGS

(a) General: After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

(b) Matters Outside Pleadings: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

TCR 120 (emphasis added).

TCR 121

RULE 121. SUMMARY JUDGMENT

(a) General: Either party may move, with or without supporting affidavits, for a summary adjudication in the moving party's favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such

time as not to delay the trial.

TCR 121(a) (emphasis added).

TCR 160

RULE 160. HARMLESS ERROR

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a decision or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of a case will disregard any error or defect which does not affect the substantial rights of the parties.

TCR 160.

TCR 182

RULE 182. CASES IN WHICH THE SPECIAL TRIAL JUDGE IS AUTHORIZED TO MAKE THE DECISION

Except as otherwise directed by the Chief Judge, **[N.B. *Ad hoc* rule-making? case-by-case basis?]** the following procedure shall be observed in small tax cases (as defined in Rule 170); in cases where neither the amount of the deficiency placed in

dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in declaratory judgment actions; and in lien or levy actions: ...

(c) Declaratory Judgment and Lien or Levy Actions: A Special Trial Judge who conducts the trial of a declaratory judgment action or, except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a lien or levy action, or to whom such a case is submitted for decision, shall, as soon after such trial or submission as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge. **[N.B. neither filed nor served.]**

(d) Decision: The Chief Judge may authorize the Special Trial Judge to make the decision of the Court **[N.B. *But see Gonzalez v. United States*, __ U.S. __ (12 May 2008).]** in any small tax case (as defined in Rule 170); in any case where neither the amount of the deficiency placed in dispute (within the meaning of Code section 7463), nor the amount of any claimed overpayment, exceeds $50,000; in any declaratory judgment action; and in any lien or levy action, subject to such conditions and review as the Chief Judge may provide.

[effective date note omitted] (e) Procedure in Event of Assignment to a Judge:
In the event the Chief Judge decides to assign a case (other than a small tax case) to a Judge **[N.B. Cases not assigned to *another* judge are necessarily self-assigned to the chief judge; i.e., there is no**

such thing as a case *with* an STJ *but without* a judge.] to prepare a report in accordance with Code section 7460 and to make the decision of the Court, the proposed findings of fact and opinion previously submitted to the Chief Judge shall be filed **[N.B. Contrast this with TCR 182(c).]** as the Special Trial Judge's recommended findings of fact and conclusions of law. Thereafter, the procedures of Rule 183(b), (c), and (d) shall apply.

TCR 182(c), (d), and (e) (emphasis added).

TCR 183

RULE 183. OTHER CASES [effective date note omitted]

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) Trial and Briefs: A Special Trial Judge shall conduct the trial of any assigned case. **[N.B. *But see Gonzalez v. United States*, __ U.S. __ (12 May 2008).]** After such trial, the parties shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(b) Special Trial Judge's Recommendations: After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial

Judge shall file recommended findings of fact and conclusions of law and a copy of the recommended findings of fact and conclusions of law shall be served in accordance with Rule 21. **[N.B. Compare and contrast this with TCR 182(c), (e).]**

(c) Objections: Within 45 days after the service of the recommended findings of fact and conclusions of law, **[N.B. contrast this with TCR 182(c)]** a party may serve and file specific, written objections to the recommended findings of fact and conclusions of law. A party may respond to another party's objections within 30 days after being served with a copy thereof. The above time periods may be extended by the Special Trial Judge. After the time for objections and responses has passed, the Chief Judge shall assign the case to a Judge for preparation of a report in accordance with Code section 7460. **[N.B. Obviously, any case not otherwise assigned is necessarily self-assigned to, retained by, the chief judge.]** Unless a party shall have proposed a particular finding of fact, or unless the party shall have objected to another party's proposed finding of fact, the Judge may refuse to consider the party's objection to the Special Trial Judge's recommended findings of fact and conclusions of law for failure to make such a finding or for inclusion of such finding proposed by the other party, as the case may be.

(d) Action on the Recommendations: The Judge to whom the case is assigned may adopt the Special Trial Judge's recommended findings of fact and conclusions of law, or may modify or reject them in whole or in part, or may direct the filing of additional

briefs, or may receive further evidence, or may direct oral argument, or may recommit the recommended findings of fact and conclusions of law with instructions. The Judge's action on the Special Trial Judge's recommended findings of fact and conclusions of law shall be reflected in the record by an appropriate order or report. **[N.B. *See Ballard v. comm'r*, 544 U.S. 40 (2005).]** Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

TCR 182 (emphasis added).

irc § 7443A

Section 7443A. Special trial judges

(a) Appointment

The chief judge may, from time to time, appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court.

(b) Proceedings which may be assigned to special trial judges

The chief judge may assign -

(1) any declaratory judgment proceeding,

(2) any proceeding under section 7463,

(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning

of section 7463) nor the amount of any claimed overpayment exceeds $50,000,

(4) any proceeding under section 6320 or 6330, and

(5) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court.

(c) Authority to make court decision

The court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), (3), or (4) of subsection (b), subject to such conditions and review as the court may provide.

irc § 7443A(a), (b), (c) (**emphasis added**).

Rule 14.1(i)(vi)—Additional Essential Materials

Reference to the Record will suffice